

BIDDER INSTRUCTIONS

EXHIBIT "A"

DISADVANTAGED

BUSINESS ENTERPRISE PARTICIPATION

EXHIBIT A

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

(August 2, 2004) Disadvantaged Business Enterprise Participation

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR part 26 apply to this contract. The requirements of this contract are to encourage DBE participation, supply a bidder's list, and to report race neutral accomplishments quarterly as described in this special provision. No preference will be included in the evaluation of bids/proposals, no minimum level of DBE participation shall be required as a condition for receiving an award and bids/proposals will not be rejected or considered non-responsive on that basis.

DBE Goals

No DBE goals have been assigned as a part of this contract.

Affirmative Efforts to Solicit DBE Participation

DBE firms shall have equal opportunity to compete for and perform subcontracts which the Contractor enters into pursuant to this contract. Contractors are encouraged to:

1. Advertise opportunities for Subcontractors or suppliers in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g. newspapers, journals, etc.) or by soliciting bids/proposals directly from DBEs.
2. Utilize the services of available minority community-based organizations, minority contractor groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses.

In addition, the Office of Minority and Women's Business Enterprises has two DBE Supportive Services Offices available to assist you as follows:

Seattle: (206) 553-7356
Tacoma: (253) 680-7393

3. Establish delivery schedules, where requirements of the contract allow, that encourage participation by DBEs and other small businesses.

- 1
2 4. Achieve attainment through joint ventures.
3

4 In the absence of a mandatory goal, all DBE participation that is attained on this
5 project will be considered as “race neutral” participation and will be reported as
6 such.
7

8
9 **DBE Eligibility (for reporting purposes only)**

10 **Selection of DBEs:**

11 DBEs utilized on the contract will be eligible to be counted as race neutral
12 participation only if the firm is identified as a DBE on the current list of firms
13 certified by the Office of Minority and Women’s Business Enterprises (OMWBE),
14 the DBE firm is certified in the corresponding NAICS code(s) for the type of work to
15 be performed, and the DBE firm performs a commercially useful function. A list of
16 firms certified by OMWBE, including the NAICS codes for which they are certified,
17 is available from that office and on line through their website
18 (www.omwbe.wa.gov/directory/directory.htm) or by telephone at (360) 704-1181.
19

20 **Counting DBE Participation For Reporting Race Neutral Accomplishments**

21 When a DBE firm participates in a contract, only the value of the work actually
22 performed by the DBE will be counted as race-neutral participation.
23

- 24 1. Count the entire amount of the portion of the contract that is performed by the
25 DBE's own forces. Include the cost of supplies and materials obtained by the
26 DBE for the work of the contract, including supplies purchased or equipment
27 leased by the DBE (except supplies and equipment the DBE Subcontractor
28 purchases or leases from the Prime Contractor or its affiliate, unless the Prime
29 Contractor is also a DBE). Work performed by a DBE, utilizing resources of
30 the Prime Contractor or its affiliates will not be counted as race-neutral
31 participation. In very rare situations, a DBE firm may utilize equipment
32 and/or personnel from a non-DBE firm other than the Prime Contractor or its
33 affiliates. Should this situation arise, the arrangement must be short-term and
34 have prior written approval from the Contracting Agency. The arrangement
35 must not erode a DBE firm’s ability to perform a Commercially Useful
36 Function (See discussion of CUF, below).
37
- 38 2. Count the entire amount of fees or commissions charged by a DBE firm for
39 providing a bona fide service, such as professional, technical, consultant, or
40 managerial services, or for providing bonds or insurance.

3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted as race neutral participation only if the DBE's lower tier Subcontractor is also a DBE. Work that a DBE Subcontracts to a non-DBE firm does not count as race neutral participation.
4. When a non-DBE subcontractor further subcontracts to a lower-tier subcontractor or supplier who is a certified DBE, then that portion of the work further subcontracted may be counted toward the DBE goal, so long as it is a distinct clearly defined portion of the work of the subcontract that the DBE is performing with its own forces in a commercially useful function.

DBE Prime Contractor

A DBE prime Contractor may only count the work performed with its own forces and the work performed by DBE Subcontractors and DBE suppliers.

Joint Venture

When a DBE performs as a participant in a joint venture, only that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces will count as race neutral participation.

Commercially Useful Function

Payments to a DBE firm will count as race neutral participation only if the DBE is performing a commercially useful function on the contract.

1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself.
2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

1 **Trucking**

2 Use the following factors in determining whether a DBE trucking company is
3 performing a commercially useful function:
4

- 5 1. The DBE must be responsible for the management and supervision of the
6 entire trucking operation for which it is listed on a particular contract.
7
- 8 2. The DBE must itself own and, with its own workforce, operate at least one
9 fully licensed, insured, and operational truck used on the contract.
10
- 11 3. The DBE receives credit only for the total value of the transportation services
12 it provides on the contract using trucks it owns or leases, insures, and operates
13 with drivers it employs.
14
- 15 4. For purposes of this paragraph a lease must indicate that the DBE has
16 exclusive use of and control over the truck. This does not preclude the leased
17 truck from working for others during the term of the lease with the consent of
18 the DBE, so long as the lease gives the DBE absolute priority for use of the
19 leased truck. Leased trucks must display the name and identification number
20 of the DBE.
21
- 22 5. The DBE may lease trucks from another DBE firm, including an owner-
23 operator who is certified as a DBE. The DBE who leases trucks from another
24 DBE may report race-neutral participation for the total value of the
25 transportation services the lessee DBE provides on the contract.
26
- 27 6. The DBE may also lease trucks from a non-DBE firm and may enter an
28 agreement with an owner-operator who is a non-DBE. The DBE who leases
29 trucks from a non-DBE or employs a non-DBE owner-operator is entitled to
30 count race-neutral participation only for the fee or commission it receives as a
31 result of the lease arrangement. The DBE may not count the total value of the
32 transportation services provided by the lessee, since these services are not
33 provided by a DBE.
34
- 35 7. In any lease or owner-operator situation, as described in paragraphs 5 & 6
36 above, the following rules shall apply:
37
38 • The DBE is limited to leasing or renting two additional trucks for each
39 truck owned by the DBE trucking firm. The total number of leased or
40 rented trucks shall include owner-operator arrangements.

- A written lease/rental agreement on all trucks leased or rented, showing the true ownership and the terms of the rental must be submitted and approved by the Contracting Agency prior to the beginning of the work. The agreement must show the lessor's name, trucks to be leased, and agreed upon amount or method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. Does not apply to owner-operator arrangements.
- Only the vehicle, (not the operator) is leased or rented. Does not apply to owner-operator arrangements.

8. In order for payments to be counted as race-neutral participation, DBE trucking firms must be covered by a subcontract or a written agreement approved by WSDOT prior to performing their portion of the work.

Expenditures paid to other DBEs

Expenditures paid to other DBEs for materials or supplies may be counted toward race neutral participation as provided in the following:

Manufacturer

1. Counting
If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward race neutral participation.
2. Definition
To be a manufacturer, the firm operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
3. In order to receive credit as a DBE manufacturer, the firm must have received an "on-site" review and been approved by WSDOT-OEO to operate as a DBE Manufacturing firm. To schedule a review, the manufacturing firm must submit a written request to WSDOT/OEO and may not receive race neutral credit, until the completion of the review. Once a firm's manufacturing process has been approved in writing, it is not necessary to resubmit the firm for approval unless the manufacturing process has substantially changed. Information on approved manufacturers may be obtained from WSDOT-OEO.

1 **Regular Dealer**

2 1. Counting

3 If the materials or supplies are purchased from a DBE regular dealer, 60
4 percent of the cost of the materials or supplies will count toward race neutral
5 participation.
6

7 2. Definition

8 a) To be a regular dealer, the firm must own, operate or maintain a store,
9 warehouse, or other establishment in which the materials, supplies,
10 articles or equipment of the general character described by the
11 specifications and required under the contract are bought, kept in
12 stock, and regularly sold or leased to the public in the usual course of
13 business. It must also be an established, regular business that
14 engages, as its principal business and under its own name, in the
15 purchase and sale or lease of the products in question.
16

17 b) A person may be a regular dealer in such bulk items as petroleum
18 products, steel, cement, gravel, stone, or asphalt without owning,
19 operating, or maintaining a place of business, as provided elsewhere
20 in this specification, if the person both owns and operates distribution
21 equipment for the products. Any supplementing of regular dealers'
22 own distribution equipment shall be by a long-term lease agreement
23 and not on an ad hoc or contract-by-contract basis.
24

25 c) Packagers, brokers, manufacturers' representatives, or other persons
26 who arrange or expedite transactions are not regular dealers.
27

28 3. Regular dealer status is granted on a contract-by-contract basis. To obtain
29 regular dealer status, a formal written request must be made by the interested
30 supplier (potential regular dealer) to WSDOT/OEO. Included in the request
31 shall be a full description of the project, type of business operated by the
32 DBE, and the manner the DBE will operate as a regular dealer on the specific
33 contract. Rules applicable to regular dealer status are contained in 49 CFR
34 Part 26.55.e.2. Once the request is reviewed by WSDOT-OEO, the DBE
35 supplier requesting it will be notified in writing whether regular dealer status
36 was approved.

1 **Materials or Supplies Purchased from a DBE**

2 With respect to materials or supplies purchased from a DBE who is neither a
3 manufacturer nor a regular dealer, the entire amount of fees or commissions charged
4 for assistance in the procurement of the materials and supplies or fees or
5 transportation charges for the delivery of materials or supplies required on a job site
6 may be counted as race neutral participation. No part of the cost of the materials and
7 supplies themselves may be applied as race neutral participation.
8

9 **Procedures Between Award and Execution**

10 After award of the contract, the successful bidder shall provide the additional
11 information described below. A failure to comply shall result in the forfeiture of the
12 bidder's proposal bond or deposit.
13

14 A list of all firms who submitted a bid or quote in an attempt to participate in this
15 project whether they were successful or not. Include the correct business name,
16 federal employer identification number (optional) and a mailing address.
17

18 The firms identified by the Contractor may be contacted to solicit general
19 information as follows:
20

- 21 1. age of the firm
- 22
- 23 2. average of its gross annual receipts over the past three-years
24

25 **Procedures After Execution**

26 **Reporting**

27 The Contractor shall submit a "Quarterly Report of Amounts Credited as DBE
28 Participation" (actual payments) on a quarterly basis for any calendar quarter in
29 which DBE work is accomplished or upon completion of the project, as appropriate.
30 The quarterly reports are due on January 20th, April 20th, July 20th, and October 20th
31 of each year. The dollars reported will be in accordance with the "**Counting DBE**
32 **Participation For Reporting Race Neutral Participation**" section of this
33 specification.
34

35 In the event that the payments to a DBE have been made by an entity other than the
36 Prime Contractor (as in the case of a lower-tier subcontractor or supplier), then the
37 Prime Contractor shall obtain the quarterly report, including the signed affidavit,
38 from the paying entity and submit the report to the Contracting Agency.
39

40 **Payment**

41 Compensation for all costs involved with complying with the conditions of this
42 specification and any associated DBE requirements is included in payment for the
43 associated contract items of work.

1 **Further Information**

2 If further information is desired concerning Disadvantaged Business Enterprise
3 participation, inquiry may be directed to:

4
5 External Civil Rights Branch
6 Office of Equal Opportunity
7 Washington State Department of Transportation
8 Transportation Bldg., P.O. Box 47314
9 Olympia, WA 98504-7314

10
11 or: Telephone: (360) 705-7085
12 Fax: (360) 705-6801
13